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C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 001459

SENSITIVE
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TAGS: [ECON](#) [ENRG](#) [PREL](#) [BK](#)

SUBJECT: BOSNIA - DODIK CHALLENGES PIC BY SEEKING TO
UNILATERALLY REVERSE COMPETENCY TRANSFER

REF: SARAJEVO 1309

Classified By: Classified by Michael J. Murphy for reason 1.4 B,D

¶1. (C) Summary: On September 11, the RS Government began the process of withdrawing from the state-managed electricity transmission company, Electroprenos BiH (TRANSCO) and establishing a RS transmission company. In February of this year, Dodik proposed several reforms to TRANSCO that would essentially create three sub-transcos -- to which Federation PM Brankovic did not respond until several months later. Despite Dodik's comments that the RS has "exhausted" all attempts to fix the company, there has only been one meeting by the Federation and RS Ministers of Energy to discuss the issues each side has with TRANSCO. At the September 12 Peace Implementation Council (PIC) Steering Board Ambassadors (SBA) Meeting, there was consensus, including the Russians, that the RS action was a direct challenge to the PIC, which made clear in October 2007 that no entity may unilaterally reverse previous reforms or competency transfers. The PIC SBA issued a press statement on September 12 condemning the RS actions and calling for immediate reversal. If Dodik is successful in withdrawing from TRANSCO, essentially dissolving it, every other state-level institution will be under threat. End Summary.

RS CLAIMS FEDERATION INTRANSIGENCE FORCES ITS HAND

¶2. (C) On September 11, the RS Government passed a "conclusion" that tasked the RS Minister of Economy, Energy and Development "to prepare within the shortest possible timeframe, and in 30 days at the latest" all the measures necessary to establish an RS electricity transmission company and to withdraw from the state-managed electricity transmission company, Elektroprenos BiH (TRANSCO). The RS Government conclusion and RS authorities justified the action by claiming that they had exhausted all opportunities to overcome problems with the operation of TRANSCO. They suggested that they did not get the cooperation they needed from the company or their Federation counterparts. According to the Office of the High Representative (OHR), dissolution of TRANSCO would be the first official withdrawal from a previously transferred competency to the state (reftel).

REAL PROBLEMS, BUT NOT A REAL SOLUTION

¶3. (C) RS claims that there are problems with TRANSCO are accurate, and the international community, including the U.S. and the EU, have been engaged in an effort to improve its operation. However, the RS has not made a good faith effort to resolve these problems. Instead, RS PM Dodik proposed

"reforms" to Federation PM Brankovic (who, along with Dodik, is one of the two "general shareholders" of TRANSCO) in February that would, among other things, effectively create three sub-transcos along ethnic lines. In effect, Dodik's reform proposal amounted to a defacto break-up of TRANSCO. Unsurprisingly, Brankovic delayed in sending a response to Dodik's proposal and initially refused to negotiate on the basis of them. This prompted a heated letter from Dodik to Brankovic on July 18. Brankovic sent a response to his letter on July 22 and the two entity Ministers of Energy met for the first time on July 31 to begin negotiations, but made no progress (reftel). On August 3, Dodik met with High Representative Lajcak in Banja Luka and told the High Rep he would take no unilateral action regarding TRANSCO.

OHR: RS ACTIONS A DIRECT CHALLENGE TO THE PIC

14. (C) In the PIC meeting on September 12, PDHR Raffi Gregorian, who chaired the meeting in the absence of the High Representative Lajcak, provided Ambassadors with a copy of the RS Government conclusion, which had only been made available to OHR two hours earlier. Noting that he had spoken with High Rep Lajcak, who was in Berlin, and that he was relaying Lajcak's views, PDHR stressed that if the RS Government conclusion is implemented it would cross a red line set by the PIC in October 2007, which made very clear, very publicly that such actions would have consequences. OHR lawyers stated that what the RS had done was outside any procedure set forth in the law, and was in contravention of numerous EU-related obligations, and quite possibly violated the Dayton Constitution.

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CONCERN AMONG AMBASSADORS ABOUT SERIOUSNESS OF CHALLENGE

15. (C) Ambassadors agreed that the RS action posed a serious challenge to the PIC and required a strong response. Even the Russian Ambassador conceded that the RS action was "politically deplorable", but added ominously that Russia did not share OHR's analysis that it was potentially unconstitutional for an entity to unilaterally reverse a competency transfer. The EC Ambassador and the French Ambassador, speaking in her capacity as EU President, noted that establishment of a single electricity transmission company had been a precondition for signing the Stabilization and Association Agreement (SAA). They noted that, if implemented, the RS conclusion would reverse the major progress achieved in the electricity sector required by the EU and seriously set back Bosnia's European integration progress. The Canadian argued that it was "inconceivable that the PIC could pretend like this didn't happen".

PIC SBA DEMANDS RS REVOKE CONCLUSION

16. (U) After the initial SBA exchange, the Ambassadors agreed to issue a statement calling on the RS Government to revoke its conclusion. The text of the statement follows:

The Ambassadors of the Peace Implementation Council's Steering Board treats as extremely serious, the conclusion adopted yesterday by the RS Government to begin the process of revoking approval for the Law on Electricity Transmission, Regulator and System Operator in BiH, in the part pertaining to establishment of Electricity Transmission Company in BiH and canceling the Agreement on Transmission Company and Independent System Operator between the entity prime ministers in BiH.

The Ambassadors remind the RS Government of the clear position the PIC Steering Board set out in its 31 October 2007 Declaration regarding possible unilateral action of this nature by the entities, when it noted that "The PIC Steering

Board also re-emphasizes its concern regarding suggestions that certain reforms could be reversed unilaterally by entity decisions retrieving competencies previously transferred to the state. An entity cannot withdraw unilaterally from a previously agreed reform."

The PIC Steering Board Ambassadors expect the RS Government to revoke its conclusion and continue to work within the established institutions and laws of Bosnia and Herzegovina, in this case the Electricity Transmission Company in BiH and to continue to work in the spirit of compromise to improve the functionality of these institutions.

Any move to implement this conclusion by the RS authorities would be addressed as set out in the October 2007 PIC Steering Board Declaration.

End Text

COMMENT

17. (C) The RS conclusion and instructions to the RS Minister of Economy, Energy and Development to withdraw from TRANSCO and to establish an RS transmission system are a clear assault by Dodik on a state-level institution and a direct challenge to the PIC and the international presence in Bosnia. Dodik has picked his target well in that, on the surface, TRANSCO may indeed be dysfunctional and all knowledgeable observers agree that management and other reforms are needed. Federation officials are not without fault in this saga, however, the General Manager, who is at the core of the management problem, is a Serb. Moreover, the RS has made no real attempt at working with the Federation or the International Community (which has invested hundreds of millions of dollars in reconstructing and reforming the energy sector in Bosnia) to craft and implement real solutions. In light of the September 11 RS conclusion, Dodik's February proposals for reform, such as dividing TRANSCO into three ethnically based companies, appear to have been merely preliminary steps toward the action taken this week. The PIC SBA statement highlights the fact that the RS action violates the PIC red-line that state-level reforms and

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institutions cannot be unilaterally undone. Dodik's RS is now blatantly testing that resolve, even more blatantly than he has in the past (e.g. frozen foreign currency, Missing Persons Institute). If the RS succeeds in the effort to violate a state-level law, and in effect, unilaterally reverse a competency transfer, it would encourage similar attacks on every state-level institution in BiH from the High Judicial and Prosecutorial Council to the Central Bank to the State Intelligence Service to the VAT system to the Ministry of Defense.

ENGLISH